Petition

81-1327

No. _____

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CLERK

IN THE

Supreme Court of the United States

October Term, 1982

NATIONAL HEALTH AGENCIES,

Petitioner,

vs.

UNITED WAY OF SAN DIEGO COUNTY, INC., et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the supremacy clause of the United States Constitution, Article VI, § 2, exempts private non-profit organizations from complying with local ordinances and state statutes regulating their fund-raising activities when they solicit in person for charitable donations from federal employees and members of the armed forces at their places of employment and duty stations.

2. Whether the procedure for donors to select recipients of their gifts was so complicated or arbitrary that it frustrated or prohibited "true voluntary giving," as required in Executive Order No. 10927.

3. Whether the procedure for donors to select recipients of their gifts was so complicated or arbitrary that it violated California gift and trust law.

PARTIES TO THE PROCEEDING

Petitioner, National Health Agencies, at the time this controversy arose was an unincorporated association under the laws of the State of California, with its principal place of business for San Diego County in the City of San Diego, State of California, and whose members were the following fifteen (15) non-profit organizations: American Cancer Society, American Diabetes Association, American Heart Association, Arthritis Foundation, Birth Defects - March of Dimes, Cystic Fibrosis Foundation, Easter Seal Society For Crippled Children and Adults, Mental Health Association In San Diego, Muscular Distrophy Association, National Association For Sickle Cell Disease - Operation Save The Babies, National Hemophilia Foundation, National Kidney Foundation, National Multiple Sclerosis Society, North (San Diego) County Association For The Retarded, and Prevention of Blindness.

Respondent United Way of San Diego County, Inc. at the time this controversy arose was a nonprofit corporation under the laws of the

State of California with its principal place of business for San Diego County in the City of San Diego, State of California, whose members were the following seventy-seven (77) nonprofit organizations: Action Enterprises Development, Alpha Project, Alpine Youth Center, American National Red Cross, San Diego County Chapter, American Social Health Association, Barrio Station, Bayside Settlement House, Beach Area Community Clinic, Big Sister League, Boys and Girls Aid Society of San Diego, Boys Clubs [Carlsbad, Chula Vista, El Cajon, Escondido, Fallbrook, National City, Oceanside, San Diego (4), San Dieguito (2), South Bay (2), Vista], Catholic Family Service, Cedar Community Center, Center for Women's Studies and Services, Chicano Community Health Center, Chicano Federation of San Diego County, Child Guidance Clinic of San Diego, Children's Home Society of California, Chula Vista Camp Association, Chula Vista Welfare Council, Community Campership Council, Community Congress, Council of Pilipino-American Organizations, Episcopal Community Services, Exploring Family School, Fallbrook Emergency Relief, Family Service Association of San Diego County, Girl Scouts [San Diego - Imperial Council], Girls Clubs [National City and San Diego], Guideline - Information and Referral Service, HELP Center, Imperial Beach Community Clinic, Jewish Community Center, Jewish Family Service of San Diego, Legal Aid Society of San Diego, Mercy Clinic, National City Relief Federation, National Recreation and Park Association, Neighborhood House Association, North County Armed Services YMCA, North County Centro de Information, North County Lifeline, Ocean Beach Community Services, Oceanside Council of Camp Fire Girls, Pendleton Day Care Center, Salvation Army - San Diego County Headquarters, San Diego Armed Services YMCA, San Diego Braille Club, San Diego Center for Children, San Diego County Association for the Retarded, San Diego County Council, Boy Scouts of America, San Diego County Council of Camp Fire Girls, San Diego State University YMCA - YWCA, San Diego Urban League, San Diego Youth Services, South Mesa Nursery and Pre-school; Speech, Hearing and Neurosensory Center, Travelers Aid Society of San Diego, Travelers Aid International

Social Service, United Cerebral Palsy Association of San Diego County, USO Council of San Diego, Visiting Nurse Association/Homemaker Service of San Diego, Volunteer Bureau Division, Welfare Rights, Information, Issue and Exchange; YMCA of San Diego County, and YWCA of San Diego County.

Respondent International Service Agencies at the time this controversy arose was an unincorporated association under the laws of the State of California with its principal place of business for San Diego County in the City of San Diego, State of California, and whose members were the following six (6) nonprofit organizations: Care, Project Hope, International Rescue Committee (IRC), Save the Children Federation, International Human Assistance Program, and Planned Parenthood - World Population.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

NATIONAL HEALTH AGENCIES,
Petitioner,

vs.

UNITED WAY OF SAN DIEGO COUNTY, INC., et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

National Health Agencies, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, affirming the judgment of the United States District Court for the Southern District of California, entered in the above-entitled case on August 27, 1981, and in which petition for rehearing was denied on October 19, 1981.

OPINIONS BELOW

The Memorandum Opinion of the United States Court of Appeals will not be reported [see 661 F.2d 941 (table)] and is reproduced in Appendix A hereto, *infra*. The Order Granting and Denying Motions for Summary Judgment and the Judgment are unreported and are reproduced in Appendices C and D, respectively.

JURISDICTION

The Memorandum Opinion of the Court of Appeals (App. A hereto, *infra*) was entered on August 27, 1981. A timely petition for rehearing was denied on October 19, 1981 (App. F hereto, *infra*). The jurisdiction of the court is invoked under 28 U.S.C. § 1254(1). This case arises out of an appeal from a judgment entered on a motion for summary judgment. In that respect, it closely resembles the case of *Hancock v. Train*, 426 U.S. 167, 176-177, 96 S.Ct. 2006, 48 L.Ed.2d 555 (1976).

CONSTITUTIONAL PROVISIONS

The supremacy clause of the United States Constitution, Article VI:

> "**Clause 2. Supreme Law of Land**
>
> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

EXECUTIVE ORDERS

Executive Order No. 10728, 22 Fed. Reg. 7219 (1957), see App. G hereto, *infra*.

Executive Order No. 10927, 26 Fed. Reg. 2383 (1961), see App. H hereto, *infra*.

REGULATIONS

Manual On Fund-Raising Within The Federal Service, § 4.8 [C.R. 20], see App. J hereto, *infra*.

STATEMENT OF THE CASE

This case involves a determination of which local, state, and/or federal case law, statutory, executive order, and administrative regulations, if applicable and valid, were violated by the fund raising procedures of private, non-profit organizations in allocating charitable donations from federal employees and members of the armed forces at their places of employment and duty stations, and whether the supremacy clause of the United States Constitution exempts these fund raising activities from state and local regulation.

On September 6, 1957, President Dwight D. Eisenhower signed Executive Order No. 10728, 22 Fed. Reg. 7219 (1957), which established the President's Committee on Fund-Raising Within the Federal Service. Among other things, it provided:

> "WHEREAS it has been the traditional policy of the executive branch of the United States Government to permit certain national voluntary health and welfare agencies and certain other volunteer agencies to solicit funds from Federal employees and members of the armed forces at their places of employment or duty stations; and

WHEREAS such solicitations should be conducted so as to *afford an opportunity for true voluntary giving* (emphasis added) to such agencies for charitable and other purposes; and . . .

NOW, THEREFORE, . . . it is hereby ordered as follows:

Section 1. Fund-raising campaigns and solicitations within the executive branch of the Government shall be in accordance with and subject to the following rules and regulations:

(a) There shall be a *uniform fund-raising program of true voluntary giving* (emphasis added) for all executive departments and agencies, including the armed forces of the United States. . . .

(f) *There shall be preserved the right of the giver to choose the agency or agencies which shall receive his gift.* (Emphasis added) . . . ."

On March 18, 1961, President John F. Kennedy signed Executive Order No. 10927, 26 Fed. Reg. 2383 (1961), which abolished The President's Committee On Fund-Raising Within The Federal Service and provided for the conduct of fund-raising activities. Among other things, it provided:

"Section 1. The President's Committee on Fund-Raising Within the Federal Service, established by Executive Order No. 10728 of September 6, 1957, is hereby abolished, and that order is hereby revoked.

Section 2(a). The Chairman of the Civil Service Commission (whose name was later changed to Office of Personnel Management) shall *make arrangements* (emphasis added) for such national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate to solicit funds from Federal employees and members of the armed forces at their places of employment and duty stations.

(b) . . . *Such arrangements shall (1) permit true voluntary giving*. . . . (emphasis added)."

Once a year voluntary health and welfare organizations solicit contributions from federal employees and members of the armed services at their places of employment and duties stations in the San Diego area. This is called the Combined Federal Campaign (also referred to as CFC). Each area of the country has its own CFC. The CFC was established to meet employees' wishes for a single campaign, to reduce government expenses in holding separate campaigns, to permit payroll deductions for charitable contributions, and to provide better support for voluntary health and welfare organizations. The CFC typically occurs in the fall of each year. [C.R. 3]

The CFC for the San Diego area is conducted by three "agency groups":

(1) Petitioner National Health Agencies (hereafter referred to as NHA), an unincorporated association, consisting of 15 non-profit organizations (mostly health agencies).

(2) Respondent The United Way of San Diego County, Inc., (hereinafter referred to as UW), a non-profit corporation, consisting of 77 non-profit organizations (mostly local welfare organizations).

(3) Respondent International Service Agencies (hereafter referred to as ISA), an unincorporated association, consisting of six non-profit organizations (overseas service organizations).

Representatives of NHA, UW, and ISA conferred with representatives of the Civil Service Commission to develop procedures for conducting the CFC. A chronic problem concerned the procedure for "designating gifts," *i.e.,* the procedure whereby the donor could give all or part of his gift to one or several specific organizations among the *98 individual organizations* participating in the CFC, or in the alternative, be left "undesignated," thereby going to one or more "*agency groups*," (*i.e.,* NHA, UW, and/or ISA) to be allocated according to a pre-arranged distribution formula. [C.R. 17]

Among other things, the designation procedure was discussed and debated. Finally, over the objection of NHA, a procedure was adopted for the donors to make their "designations."

Section 4.8 of the manual provided, in pertinent part, as follows: ". . . The pledge form will provide a line for the employee to confirm his choice of designation by entering his initials, . . ." [See Appendix J hereto, *infra*, for a complete text of Section 4.8.]

This initialing requirement was used for the first time in the 1978 CFC. [C.R. 3]

The written literature given to prospective donors and keymen also included in the body of the literature admonitions that if a designation to a particular agency or agencies was not validated with initials of the donor, it would be treated as "undesignated" funds. [C.R. 21, Exhibit E]

As a part of the campaign literature, two oblong cards were distributed to the prospective donors. (See Appendix I hereto, *infra*) They were to be filled out, checked, and signed by the donors and keymen. (Keymen were volunteer government employees who solicited the contributions on behalf of the three agency groups.) The information and steps required in filling out both sides of the two cards were as follows:

(1) Payroll Withholding Authorization Card [Appendix I]

Front Side:

(1) First name, middle initial, and last name.

(2) Social Security number

(3) Payroll number

(4) Federal Department or agency

(5) Installation or office

(6) Location

(7) An instruction to see back of card, discussed below

(8) Determining the amount desired to be deducted per pay period

(9) Selecting and filling in the blank or checking the box showing the amount of deduction per pay period for either civilian (bi-weekly) or military (monthly)

(10) Signing card with full signature

(11) Dating the card

Back Side:

(1) Statement concerning "Suggested Contributions"

(2) A chart showing various amounts of annual income, with corresponding suggested contributions, allocated to civilian for bi-weekly pay periods and military for monthly pay periods, and indicating total gift and the number of "pennies a day" such a gift would equal

(2) Contributor's Card for the 1978 CFC [Appendix I]

Front Side:

(1) Instruction to see back of Payroll Authorization Card (discussed above) before completing this card

(2) Instruction to see back of this card if donor wished to designate

(3) Name (print) on main body of card

(4) Installation or office

(5) Location

(6) Federal Department or Agency

(7) Filling in a blank to indicate the amount of deduction authorized each pay period

(8) Filling in the total amount of the payroll deduction

(9) Amount now given by cash or check

(10) Filling in the total amount of gift

(11) Donor's signature

(12) Date

(13) Name again on Contributor's Receipt (which is part of the front of this card)

(14) Another indication of the amount of cash given

(15) Another indication of the amount by payroll deduction (apparently annual total)

(16) Another indication of total gift

(17) Keyman's signature

(18) Date

Back Side:

(1) A statement at the top to "USE THIS SECTION ONLY IF DESIGNATING TO AN AGENCY"

(2) Instruction to see Contributor's Guide for instructions

(3) A statement that "IF DESIGNATING, DONOR MUST VALIDATE BY INITIALING ON THE LINE IMMEDIATELY BELOW THE LAST AGENCY NUMBER"

(4) Five lines in a column marked AGENCY NUMBER

(5) Five corresponding lines in a column marked "TOTAL ANNUAL AMOUNT"

(6) Keyman's verification that if attached Payroll Withholding Card is used, it is signed and Social Security Number is legilble, the front of this card is completed, signed and dated, and if designation has been made (above), it is initialed by donor.

(7) Keyman's signature

Unfortunately, approximately 6,400 of the Contributor's Cards with "designations" did not have the donors' initials "below the last agency number." However, they did have all of the other information required, including amount of gift, agency numbers of specific recipients, statistical data on work place, etc., *and* the full signatures of both the donors and Keymen in all the required places. The only thing missing was the initials of the donors below the last agency number. [C.R. 17]

UW and ISA took the position that according to the regulations, such funds were to be deemed "undesignated." NHA contended that the absence of the initials alone (a requirement to which NHA had previously and repeatedly objected) could not have the legal effect of changing the subjective intent of the donors for the use of these gifts (which are conceded to be trust funds for a particular purpose). [See C.R. 7 - page 4]

Over NHA's objection, the fiscal agent was directed to distribute the entire $150,000.00 to UW and ISA. [C.R. 17]

After extensive negotiations over several months among the three agency groups and an attempted resolution by the Civil Service Commission failed to resolve the dispute, on October 4, 1978, NHA filed a complaint in state court against UW and ISA for declaratory relief, breach of written contract, imposition of constructive trust, and for an injunction. In its complaint, NHA sought to uphold the intent of the donors, thus honoring the designations under California gift and trust law. [C.R. 1]

UW then filed a petition for removal of the action to the United States District Court, Southern District of California, on the grounds that federal employees and rules and regulations of the federal government were involved and the matter should be heard in federal court. [C.R. 1]

NHA made a timely motion for remand to state court [C.R. 3], but its motion was denied. (See Appendix B, *infra.*)

After answers to the complaint had been filed by UW and ISA in the District Court [C.R. 5 and C.R. 7], NHA made a motion for summary judgment [C.R. 17], and UW and ISA filed cross-motions for summary judgment, all on the ground that there was no genuine issue as to any material fact and that each party was entitled to judgment as a matter of law. [C.R. 20 and 21] Each party sought a ruling on the legal effect of donors omitting their initials "below the last agency number" on the 6,400 Contributor's Cards.

The District Court granted the motion for summary judgment [C.R. 27] and entered judgment [C.R. 28] in favor of UW and ISA and against NHA. [See Appendices C and D]

NHA filed a timely notice of appeal from the judgment. [C.R. 29] [See Appendix E]

In its Memorandum Opinion filed on August 27, 1981 [Appendix A], the United States Court of Appeals For The Ninth Circuit analyzed the case as follows:

> "The Civil Service Commission's authority to establish procedures for the Combined Federal Campaign derives from Executive Order 10927, signed by President Kennedy on March 18, 1961. 26 Fed. Reg. 2383 (1961). Although NHA claims that the Civil Service Commission exceeded its authority, we agree with the statement of the district judge that the Commission's validation requirement was a reasonable means of preventing fraud and other abuses. It was well within the Commission's delegated authority.
>
> The district judge did not state whether California law would require the pledge cards to be honored without the donor's initials, nor do we. It is apparent, however, that even if California law could be construed as NHA urges, it could not be controlling in this case. Under the supremacy clause, the Civil Service Commission could not be forced to comply with local laws in regulating the

conduct of charitable campaigns at federal institutions. *Hancock v. Train*, 426 U.S. 167, 178-81 (1976); *Mayo v. United States*, 319 U.S. 441, 445 (1943); *Maun v. United States*, 347 F.2d 970, 974-76 (9th Cir. 1965). To hold otherwise could force the Commission to comply with a myriad of rules, rendering an orderly campaign all but impossible. *See United States Postal Service v. Council of Greenburgh Civic Associations*, ___ U.S. ___, 49 U.S.L.W. 4813, 4818-19 (June 25, 1981). Since in this case the Commission's requirements were within its authority, the judgment of the district court is affirmed.

AFFIRMED."

NHA filed a timely petition for rehearing on the grounds that the cases cited by the Court were inapplicable, and even without applying local law, the initialing requirements violate the concept of "true voluntary giving" required by the executive order. The Court of Appeals, however, denied NHA's petition for rehearing on October 19, 1981. (See Appendix F hereto, *infra.*)

REASONS FOR GRANTING THE WRIT

The writ should be granted to resolve the important question of whether the supremacy clause of the United States Constitution, Article VI, § 2, exempts private, non-profit organizations from complying with state and local fund-raising regulations when they solicit charitable donations from federal employees and members of the armed forces at their places of employment and duty stations. The Court of Appeals, in its opinion, concluded that because of the supremacy clause *the Civil Service Commission* (emphasis added) could not be forced to comply with local laws, citing the four cases above, which deal with federal government projects or activities and attempts by states to regulate them. The fund-raising activities in question in this case, however, are and always have been those of private organizations, not the government. By its decision, the Court of Appeals has left admitted trust funds

unregulated, except for the "arrangements" made by the Civil Service Commission. No local ordinances or state laws would apply to such solicitations simply because they "touched" federal activities. The result appears contrary to the teachings of *Hancock v. Train, supra*, pages 179-180, and *Penn Dairies, Inc. v. Milk Control Commission of Pennsylvania*, 318 U.S. 261, 63 S.Ct. 617, 87 L.Ed. 748 (1943) which concluded that the state of Pennsylvania could refuse to renew the state license of a dairy for selling milk to the federal government on a competitive bid below the minimum price set by Pennsylvania law. The *Penn Dairies* case, *supra*, was cited by the Court in *Hancock v. Train, supra*, pages 179-180, when it observed that, "Neither the Supremacy Clause nor the Plenary Powers Clause bars all state regulation which may touch the activities of the Federal Government."

At least thirty-nine states and hundreds of cities and counties now regulate charitable fund-raising. The Philanthropy Monthly, Survey of State Laws Regulating Charitable Solicitations. The same 98 charitable organizations involved in this case, if they wish to raise funds in any of those regulated political subdivisions, must now comply with *all* the respective ordinances and statutes [See *Commonwealth of Pennsylvania v. National Federation of the Blind*, 471 Pa. 529, 370 Atl. Rptr.2d 732 (1977) [see Appendix K for a full text of the case], in all campaigns, except the CFC. If the state and local regulations merely "touch" federal activities, and do not unreasonably "burden" the federal government, the rule announced by the Court of Appeals in this case is unjustified. See *Hancock v. Train, supra*. "[State law] must do 'major damage' to 'clear and substantial' federal interests before the Supremacy Clause will demand that state law be overridden, *McCarty v. McCarty*, ___ U.S. ___, 101 S.Ct. 2728, 2735, 69 L.Ed.2d 589 (1981), [citing several cases].

Given the requirement of "true voluntary giving" in the executive order, and the requirements of honoring the donor's intent under state law, if state law applies to this case, some court should address the important questions raised by NHA of whether procedures required to be used by the donors to select recipients of their gifts became so

cumbersome or confusing that they created artificial barriers to "true voluntary giving" or frustrated the donors' subjective intent. So far, both courts which have had an opportunity to decide these questions have specifically refused to do so. A determination of these important questions would greatly assist the charities in this case and other charities similarly situated and prevent the problem from arising in the future. According to the (San Diego) Tribune of November 10, 1981, a survey recently completed by Yale University indicates that 5.6 million Americans work in the non-profit sector of the economy, that philanthropy accounted for $129 billion of the economy in 1980, $45 billion of which were donations, and only seven nations have a total economy bigger than that of the U.S. non-profit establishment. Yet, there are very few federal cases dealing with the types of controversies which arise in the course of charitable fund-raising activities, and Petitioner found none of the particular problem presented by this case.

CONCLUSION

NHA does not relish suing other charities, but it was *compelled* to do so in this case, after *negotiations* failed, in order to honor the wishes of the donors and to fulfill its fiduciary duties with regard to these admitted trust funds. If a court does not decide these important questions, the procedures for designations in CFC campaigns will continue to be a chronic problem. The court should also clarify the impact, if any, of the supremacy clause of the United States Constitution upon local ordinances and state statutes concerning in-person charitable solicitation campaigns by private charities under "arrangements" made by the federal government at places of employment and duty stations of federal employees and members of the armed forces. Hundreds of cities and counties and several dozen states would also benefit from such a clarification.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN L. FLOWERS
Attorney for Petitioner

APPENDICES

FILED

AUG 27 1981

RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATIONAL HEALTH AGENCIES,

Plaintiff-appellant,

v.

UNITED WAY OF SAN DIEGO COUNTY, INC., and INTERNATIONAL SERVICE AGENCIES, et al.,

Defendants-appellees.

No. 79-3718

DC No. 78-0922-S

MEMORANDUM

Argued and Submitted June 5, 1981

Appeal from the United States District Court
for the Southern District of California
Edward J. Schwartz, Chief District Judge, Presiding

Before: PREGERSON and BOOCHEVER, Circuit Judges, and MARSHALL,* District Judge.

The dispute in this case concerns the allocation of funds collected in San Diego County during the 1977-78 Combined Federal Campaign, a program which seeks charitable contributions from federal workers. Under nationwide procedures announced by the United States Civil Service Commission (now the Office of Personnel Management) in 1977, each federal employee making a donation could designate a gift to a particular agency, or else make an undesignated gift. A civil service manual, *Fund-Raising Within the Federal Service*, required that the

*The Honorable Consuelo B. Marshall, United States District Judge for the Central District of California, sitting by designation.

employee fill in a number on a pledge card which corresponded with an agency name in order to designate a gift. The manual instructed the employee to confirm the designation by initialing a blank on the pledge card. In San Diego County, out of 113,000 pledge cards, about 6,400 employees designated an agency by number, but failed to validate the specific designation by initialing the card. These pledges totaled about $150,000. If the pledges were honored, National Health Agencies (NHA) would receive two thirds of this amount, whereas under an allocation formula for designated funds that was previously agreed to by the parties, virtually all of it went to the United Way and International Service Agencies.

NHA filed suit in a California state court naming the United Way and International Service Agencies as defendants. The complaint sought declaratory relief, damages of $100,000, or in the alternative, imposition of a constructive trust on the funds NHA would have received if the pledge cards were honored. NHA's theory is that California law requires the pledge cards to be honored without the donor's initials in order to carry out, insofar as possible, the donor's intent. United Way removed the case to the federal district court, which granted the defendants' motions for summary judgment.

The Civil Service Commission's authority to establish procedures for the Combined Federal Campaign derives from Executive Order 10927, signed by President Kennedy on March 18, 1961. 26 Fed. Reg. 2382 (1961). Although NHA claims that the Civil Service Commission exceeded its authority, we agree with the statement of the district judge that the Commission's validation requirement was a reasonable means of preventing fraud and other abuses. It was well within the Commission's delegated authority.

The district judge did not state whether California law would require the pledge cards to be honored without the donor's initials, nor do we. It is apparent, however, that even if California law could be construed as NHA urges, it could not be controlling in this case. Under the supremacy

clause, the Civil Service Commission could not be forced to comply with local laws in regulating the conduct of charitable campaigns at federal institutions. *Hancock v. Train*, 426 U.S. 167, 178-81 (1976); *Mayo v. United States*, 319 U.S. 441, 445 (1943); *Maun v. United States*, 347 F.2d 970, 974-76 (9th Cir. 1965). To hold otherwise could force the Commission to comply with a myriad of rules, rendering an orderly campaign all but impossible. *See United States Postal Service v. Council of Greenburgh Civic Associations*, ___ U.S. ___, 49 U.S.L.W. 4813, 4818-19 (June 25, 1981). Since in this case the Commission's requirements were within its authority, the judgment of the district court is affirmed.

AFFIRMED.

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NATIONAL HEALTH AGENCIES,

Plaintiff,

vs.

UNITED WAY OF SAN DIEGO COUNTY, INC.; INTERNATIONAL SERVICE AGENCIES; AND DOE 1 through DOE 100,

Defendants.

No. 78-0922-S

ORDER DENYING MOTION TO REMAND

Plaintiff, NATIONAL HEALTH AGENCIES, moved this Court for an order of remand pursuant to 28 U.S.C. §1447(c) on the ground that there was no basis for federal jurisdiction. The motion was set on calendar on April 9, 1979. JOHN L. FLOWERS appeared for NATIONAL HEALTH AGENCES (*sic*), JOHN A. CRAWFORD, JR., appeared for INTERNATIONAL SERVICE AGENCIES, and WILLIAM N. KAMMER appeared for UNITED WAY OF SAN DIEGO COUNTY, INC. This Court heard the oral argument of counsel

and considered the memoranda in support of and in opposition to the motion. This Court has concluded that this action is within its original jurisdiction under the provisions of 28 U.S.C. §1331(a). Therefore,

IT IS ORDERED that the motion of NATIONAL HEALTH AGENCIES for an order of remand be denied.

Dated: May 2, 1979

Edward J. Schwartz
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

JOHN L. FLOWERS,
Attorney for National Health Agencies

JOHN A. CRAWFORD, JR.,
Attorney for International Service Agencies

C-1

JOSIAH L. NEEPER, ESQ.
WILLIAM N. KAMMER, ESQ.
GRAY, CARY, AMES & FRYE
2100 UNION BANK BUILDING
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (714) 236-1661

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BY DEPUTY

Attorneys for Defendant, UNITED WAY OF SAN DIEGO COUNTY, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NATIONAL HEALTH AGENCIES, Plaintiff, vs. UNITED WAY OF SAN DIEGO COUNTY, INC., INTERNATIONAL SERVICE AGENCIES, and DOE 1 through DOE 100, Defendants.	No. 78-0922-S Civil **ORDER GRANTING AND DENYING MOTIONS FOR SUMMARY JUDGMENT**

Plaintiff, National Health Agencies, filed its motion for summary judgment on July 16, 1979. Defendant, United Way of San Diego County, filed its motion for summary judgment on August 23, 1979. Finally, defendant, International Service Agencies, filed its motion for summary judgment on September 4, 1979. The court considered the

motions and the memoranda of points and authorities and affidavits filed in support of them. The court also heard the argument of counsel on September 17, 1979. At that time, John L. Flowers appeared for National Health Agencies, William N. Kammer appeared for United Way of San Diego County, Inc., and John A. Crawford, Jr., appeared for International Service Agencies. Good cause appearing,

IT IS ORDERED that the motions for summary judgment of defendants, United Way of San Diego County, Inc., and International Service Agencies, are granted.

IT IS FURTHER ORDERED that the cross-motion for summary judgment of plaintiff, National Health Agencies, is denied.

IT IS FINALLY ORDERED that judgment be entered in favor of the defendants and against the plaintiff, that the plaintiff recover nothing by its suit, and that the defendants recover their costs.

Dated: October 2, 1979

Edward J. Schwartz
United States District Judge

Approved as to form:

Dated: 9-21-79

John A. Crawford, Jr.
Attorney for International Service Agencies

Dated: 9-25-79

John L. Flowers
Attorney for National Health Agencies

JUDGMENT ON DECISION BY THE COURT — CIV 22 (7-63)

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY S. Christensen DEPUTY

United States District Court

FOR THE

SOUTHERN DISTRICT OF CALIFORNIA

NATIONAL HEALTH AGENCIES

vs.

UNITED WAY OF SAN DIEGO COUNTY, INC., INTERNATIONAL SERVICE AGENCIES, and DOE 1 THROUGH DOE 100

CIVIL ACTION FILE NO. 78-0922-Scutty

JUDGMENT

This action came on for ~~hearing~~ (hearing) before the Court, Honorable Edward J. Schwartz, United States District Judge, presiding, and the issues having been duly ~~heard~~ (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the motions for summary judgment of defendants, United Way of San Diego County, Inc., and International Service Agencies, are GRANTED; It is further ordered that the cross-motion for summary judgment of plaintiff, National Health Agencies, is DENIED; It is finally ordered that judgment be entered in favor of the defendants and against the plaintiff, that the plaintiff recover nothing by its suit, and that the defendants recover their costs.XXXX

X
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X
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X

Dated at San Diego, California, this 11th day of October, 1979.

WILLIAM W. LUDDY
Clerk of Court

BY: S. CHRISTENSEN
Deputy Clerk

JOHN L. FLOWERS
Attorney at Law
1010 Second Ave., Suite 1521
San Diego, CALIFORNIA 92101
(714) 234-7267

Attorney for Plaintiff

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NATIONAL HEALTH AGENCIES,

Plaintiff,

vs.

UNITED WAY OF SAN DIEGO COUNTY, INC., INTERNATIONAL SERVICE AGENCIES, and DOE 1 through DOE 100,

Defendants.

CASE NO. 78-0922-S

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that NATIONAL HEALTH AGENCIES, plaintiff above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 11th day of October, 1979.

DATED: October 26, 1979

John L Flowers

JOHN L. FLOWERS
Attorney for Plaintiff

F-1

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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CLERK, U.S. COURT OF APPEALS

NATIONAL HEALTH AGENCIES,

Plaintiff-appellant,

v.

UNITED WAY OF SAN DIEGO COUNTY, INC., and INTERNATIONAL SERVICE AGENCIES, et al.,

Defendants-appellees.

No. 79-3718

ORDER

Before: PREGERSON and BOOCHEVER, Circuit Judges, and MARSHALL,* District Judge.

The panel is constituted in the above case has voted to deny the petition for rehearing.

The petition for rehearing is denied.

*The Honorable Consuelo B. Marshall, United States District Judge for the Central District of California, sitting by designation.

G-1

No. 10728

Sept. 11, 1957, 22 F.R. 7219

ESTABLISHING THE PRESIDENT'S COMMITTEE ON FUND-RAISING WITHIN THE FEDERAL SERVICE

WHEREAS it has been the traditional policy of the executive branch of the United States Government to permit certain national voluntary health and welfare agencies and certain other voluntary agencies to solicit funds from Federal employees and members of the armed forces at their places of employment or duty stations; and

WHEREAS such solicitations should be conducted so as to afford an opportunity for true voluntary giving to such agencies for charitable and other purposes; and

WHEREAS it is essential that solicitations for these voluntary agencies be conducted in such manner as will occasion minimum interruption of Government functions; and

WHEREAS it is desirable that solicitations be conducted on a basis of uniform standards:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION 1. Fund-raising campaigns and solicitations within the executive branch of the Government shall be in accordance with and subject to the following rules and regulations:

(a) There shall be a uniform fund-raising program of true voluntary giving for all executive departments and agencies, including the armed forces of the United States.

(b) There shall be not more than three solicitations annually; provided that exceptions to this rule may be made for emergency and disaster appeals.

(c) Each recognized and approved national voluntary agency shall be assigned an appropriate period for its solicitation; and no solicitation shall be made in any period other than that assigned therefor.

(d) Persons on duty shall be subjected to a minimum of disturbance.

(e) The record-keeping relating to, and the administration of, fund-raising programs shall be held to a minimum by all Government departments and agencies concerned.

(f) There shall be preserved the right of the giver to choose the agency or agencies which shall receive his gift.

(g) The identity of each recognized national voluntary agency shall be preserved.

(h) Each national voluntary agency shall be afforded an opportunity to inform potential givers with respect to the purposes, functions, administration and operations of the agency.

(i) There shall be reserved to the individual giver the option of disclosing his contribution or keeping it confidential.

The principles enumerated above shall not be construed to affect contractual agreements with respect to the distribution of gifts between voluntary fund-raising agencies recognized for solicitation under this program.

SEC. 2. There is hereby established the President's Committee on Fund-Raising within the Federal Service, hereinafter referred to as the Committee. The Committee shall be composed of five persons from the executive branch appointed by the President, who shall designate the Chairman and Vice Chairman of the Committee. The Chairman, Vice Chairman, and other members of the Committee shall serve at the pleasure of the President.

SEC. 3. The Committee shall:

(a) Periodically review the conduct and operation of the fund-raising program under the policy reflected by this order.

(b) Recommend to the President such changes in policy as it believes necessary to improve the functioning of the program based upon its review of the conduct and operation of the fund-raising program.

(c) Make modifications in the fund-raising program as necessary to improve its functioning within the provision of this order.

(d) Review requests for participation in the said fund-raising program received from national voluntary health and welfare organizations, make determinations as to their acceptance, and assign the appropriate solicitation period to such acceptable organization.

SEC. 4. The Chairman of the Committee shall establish an Advisory Council which shall be composed of the following persons or their personal representatives:

The Surgeon General of the Public Health Service
The President of the American National Red Cross
The President of the United Community Funds and Councils of America
The President of a participating national health agency, who shall serve on a rotating basis
The Chairman of the Government Employes' Council (AFL–CIO)
The President of the National Federation of Federal Employees
The President of a participating international agency, who shall serve on a rotating basis
A member at large who shall be appointed by and serve at the pleasure of the Chairman of the Committee

The Chairman and the Vice Chairman of the Advisory Council shall be designated by the Chairman of the Committee.

SEC. 5. The Advisory Council shall provide the Committee with advice and counsel concerning the policies, procedures and eligibility for solicitation within the Federal establishment.

SEC. 6. The head of each department or agency shall:

(a) See that voluntary fund-raising within his department or agency is conducted in accordance with the policies, principles, and procedures prescribed by or pursuant to this order.

(b) Cooperate with the Committee and the participating voluntary agencies under this order.

(c) Designate a representative to work with the Committee as necessary to put the fund-raising program into effect within his department or agency.

SEC. 7. This order shall not apply to solicitations conducted by organizations composed of civilian employees or members of the armed forces among their own members for organizational support or for benefit or welfare funds for their members. Such solicitations shall be conducted under policies and procedures approved by the head of the department or agency concerned.

SEC. 8. Federal officers and employees shall receive no additional compensation for services performed for, or as members of, the Committee or the Advisory Council. Non-Federal members of the Advisory Council and their personal representatives shall receive no Federal compensation for their services as such members or representatives.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
September 6, 1957.

Presidential Documents

Title 3—THE PRESIDENT

Executive Order 10927

ABOLISHING THE PRESIDENT'S COMMITTEE ON FUND-RAISING WITHIN THE FEDERAL SERVICE AND PROVIDING FOR THE CONDUCT OF FUND-RAISING ACTIVITIES

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. The President's Committee on Fund-Raising Within the Federal Service, established by Executive Order No. 10728 of September 6, 1957, is hereby abolished, and that order is hereby revoked.

SEC. 2. (a) The Chairman of the Civil Service Commission shall make arrangements for such national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate to solicit funds from Federal employees and members of the armed forces at their places of employment or duty stations.

(b) In making the arrangements required by subsection (a) of this section, the Chairman of the Civil Service Commission is authorized t consult with appropriate interested persons and organizations, the national voluntary agencies, and the executive departments and agencies concerned. Such arrangements shall (1) permit true voluntary giving and reserve to the individual the option of disclosing his gift or keeping it confidential; (2) designate specific periods during with solicitations may be conducted; and (3) provide for not more than three solicitations annually, except in cases of emergency or disaster appeals for which specific provision may be made by the Chairman of the Civil Service Commission.

SEC. 3. This order shall not apply to solicitations conducted by organizations composed of civilian employees or members of the armed forces among their own members for organizational support or for benefit or welfare funds for their members. Such solicitations shall be conducted under policies and procedures approved by the head of the department or agency concerned.

SEC. 4. All records and property of the President's Committee on Fund-Raising Within the Federal Service are hereby transferred to the Chairman of the Civil Service Commission.

SEC. 5. This order shall become effective forty-five days after its date.

JOHN F. KENNEDY

THE WHITE HOUSE,
March 18, 1961.

[F.R. Doc. 61-2572; Filed, Mar. 20, 1961; 4:39 p.m.]

1978 COMBINED FEDERAL CAMPAIGN - SAN DIEGO COUNTY
CONTRIBUTOR'S CARD

See back of attached Payroll Authorization Card before completing this card. See back of this card if you wish to designate.

Name (print) _____

Installation or Office _____

Location Fed. Dept or Agency _____

1. I authorize payroll deduction each pay period of $ _____ a total amount of $ _____
2. I give now ☐ cash ☐ check $ _____
   TOTAL GIFT $ _____

Donor's Signature _____ Date _____

Make all checks payable to Combined Federal Campaign, San Diego County

1978
COMBINED FEDERAL CAMPAIGN
SAN DIEGO COUNTY
P.O. BOX 1549, S.D., CA. 92112

CONTRIBUTOR'S RECEIPT

NAME _____
HAS CONTRIBUTED THRU UFC TO

- UNITED WAY
- NATIONAL HEALTH AGENCIES
- INTERNATIONAL SERVICE AGENCIES

CASH $ _____
PAYROLL $ _____
TOTAL GIFT $ _____

_____
KEYMAN'S SIGNATURE

DATE _____

USE THIS SECTION ONLY IF DESIGNATING TO AN AGENCY
(See Contributor's Guide for Instructions)

IF DESIGNATING, DONOR MUST VALIDATE BY INITIALING ON THE LINE IMMEDIATELY BELOW THE LAST AGENCY NUMBER

AGENCY NUMBER	TOTAL ANNUAL AMOUNT
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	_____

KEYMAN VERIFY THAT

1. If attached Payroll Withholding Card is used, it is signed and Social Security number is legible.
2. The front of this card is completed, signed and dated.
3. If designation has been made (above), it is initialed by donor.

Keyman's Signature _____

CHAPTER 4—THE COMBINED FEDERAL CAMPAIGN

4.8 CONTRIBUTOR DESIGNATION. The right to designate will be plainly stated in the contributor's leaflet, but designations will be neither encouraged nor discouraged by keymen solicitors or in campaign publicity materials and speeches, or in materials released to public media.

The contributor's information leaflet will identify the authorized voluntary groups and list their member organizations with a brief statement describing each organization's program. The leaflet will explain how the funds will be divided among the groups and of the contributor's right to designate gifts to individual organizations. Several boxes will be provided on the pledge form so that the contributor may designate his gift. A minimum of five boxes for designation purposes will be shown on the pledge card itself. The reverse side of the pledge card may be used; however, the five designation boxes should appear on the pledge card itself. Separate designations slips are not authorized regardless of the formula used for division of receipts. The pledge form will provide a line for the employee to confirm his choice of designation by entering his initials, and the keyman will be instructed to ensure that designations have been so validated before turning in the completed cards.

Mention will be made in the contributor's leaflet and provision made on the pledge form for designation only to individual organizations, not to voluntary groups. No information will be included that leads the contributors to designate to voluntary groups. If, however, the contributor should write in a group designation, it will be tabulated and allocated to the group in accordance with the contributor's instructions. If contributions are designated to organizations not participating in the local CFC, they will not be accepted but returned to the contributor.

COMMONWEALTH of Pennsylvania,
Appellee,

v.

NATIONAL FEDERATION OF THE BLIND
and American Brotherhood for the
Blind, Appellants.

COMMONWEALTH of Pennsylvania,
Appellant,

v.

NATIONAL FEDERATION OF THE BLIND
and American Brotherhood for the
Blind, Inc., Appellees.

Supreme Court of Pennsylvania.

Argued Nov. 17, 1975.

Decided Feb. 28, 1977.

Commonwealth of Pennsylvania, through its Attorney General, filed a complaint in equity which sought to enjoin further solicitations by out-of-state charities from Pennsylvania residents until the charities complied with the filing requirements of te Solicitation of Charitable Funds Act. The Commonwealth Court, at No. 1129 C.D.1974, Bowman, President Judge, 18 Pa.Cmwlth. 291, 335 A.2d 832, overruled charities' preliminary objections to the court's jurisdiction, subsequently denied the Commonwealth's request for a preliminary injunction, and the respective parties appealed. The Supreme Court, at Nos. 15 and 18 May Term, 1976, Manderino, J., held that although the charities' only contact with Pennsylvania was the solicitation of contributions via the United States Mail, that was sufficient to subject them to judicial scrutiny within the state; that service of process on the charities by service upon the Secretary of the Commonwealth as their registered agent was proper; that the registration requirements of the Solicitation of Charitable Funds Act do not impose an undue burden on interstate commerce; and that the Act merely authorizes the Attorney General to bring an action in the name of the Commonwealth upon the failure of a charitable organization to comply with the Act's registration requirements, and in the

absence of express language providing that an injunction must be issued upon proof of a violation, it cannot be said that the legislature intended to eliminate the trial court's discretion in determining when to issue an injunction.

Affirmed.

1. Courts 12(2)

Although out-of-state charities' only contact with Pennsylvania was the solicitation of contributions via the United States Mail, that was sufficient to subject them to judicial scrutiny within the state, since the cause of action, to compel the charities to comply with statutory registration requirements, arose out of an act done or transaction consummated in Pennsylvania when the charities solicited contributions by mail, since Pennsylvania has enacted special legislation to exercise a "manifest interst" in providing effective redress for its citizens, and since the cause of action was not based on unilateral activity of the Commonwealth. 10 P.S. § 160-2(1); U.S.C.A. Const. Amend. 14.

2. Constitutional Law 309(2)

While out-of-state charities, against which suit was brought to enjoin them from soliciting contributions unless and until they complied with statutory registration requirements, questioned validity of service on the Secretary of the Commonwealth, contending that he is the real party plaintiff and thus it was a denial of due process to effectuate service upon them through the Secretary as their agent, there was no due process violation, since the Attorney General, not the Secretary, is the only party authorized to initiate an action under the Solicitation of Charitable Funds Act, and since, even assuming the Secretary is the real party plaintiff, it did not necessarily follow that there was no reasonable assurance that notice to the charities would be actual. 10 P.S. §§ 160—2(1), 160—13, 160—14; U.S.C.A.Const. Amend. 14.

3. Appeal and Error 169

A matter not raised in the trial court will not be considered on appeal.

4. Commerce 63.10

Registration requirements of Pennsylvania's Solicitation of Charitable Funds Act do not impose an undue burden on interstate commerce.

5. Injunction 1

Issuance of an injunction rests within sound discretion of trial court.

6. Charities 50

Solicitation of Charitable Funds Act merely authorizes the Attorney General to bring an action in the name of the Commonwealth upon the failure of a charitable organization to comply with the Act's registration requirements, and in the absence of express language providing that an injunction must be issued upon proof of a violation, it cannot be said that the legislature intended to eliminate the trial court's discretion in determining when to issue an injunction. 10 P.S. § 160—14(f).

7. Charities 50

While the Commonwealth argued that, even if the Solicitation of Charitable Funds Act does not expressly provide for the mandatory issuance of an injunction upon proof of a past violation, the court must issue an injunction when continuing violations are threatened, the record in the instant case failed to clearly establish that violations were continuing. 10 P.S. § 160—14(f).

Allen C. Warshaw, Deputy Atty. Gen., Dept. of Justice, Harrisburg, for appellants.

Jerome H. Gerber, James L. Cowden, Harrisburg, for appellees.

Before EAGEN, O'BRIEN, ROBERTS, POMEROY, NIX and MANDERINO, JJ.

OPINION

MANDERINO, Justice.

The Solicitation of Charitable Funds Act, Act of August 9, 1963, P.L. 628, as amended, 10 P.S. § 160-2(1) (Supp. 1974-1975) requires all charities, domestic and foreign, to file a registration statement for approval by the Secretary of the Commonwealth prior to solicitation of funds in Pennsylvania. The registration is approved if it meets the requirements of the Act which are designed to protect the citizens of Pennsylvania from solicitations by unscrupulous charities including those who expend an excessive amount of the contributions received for expenses thus minimizing the monies available to directly benefit the beneficiaries of the charity.

The appellants, National Federation of the Blind (NFB) and American Brotherhood for the Blind, Inc., (ABB) are charitable organizations as defined in the Act. Both organizations are foreign corporations maintaining offices in Des Moines, Iowa. Appellants solicited contributions from Pennsylvania residents in 1973 and 1974 by mailing letters to the homes of those solicited. Neither appellant filed a registration statement as required by the Act.

The Commonwealth of Pennsylvania, through the Attorney General, filed a complaint in equity which sought to enjoin further solicitations from Pennsylvania residents until the appellants complied with the filing requirements of the Act. The NFB and ABB filed preliminary objections to the Court's jurisdiction. The Commonwealth Court overruled the preliminary objections filed by appellants and subsequently denied the Commonwealth of Pennsylvania's request for a preliminary injunction. From these decrees the respective parties appeal.

THE APPEAL OF THE NATIONAL FEDERATION OF THE BLIND AND AMERICAN BROTHERHOOD FOR THE BLIND

[1] The NFB and ABB contend that the Due Process Clause of the Fourteenth Amendment and the Commerce Clause of the United States Constitution prohibit the Commonwealth Court from exercising in personam jurisdiction over them. In effect they are arguing that because their only connection with Pennsylvania was the solicitation of contributions via the United States Mail, they are not subject to judicial scrutiny within this State. We cannot agree with this conclusion.

The Supreme Court of the United States set forth the due process standards of jurisdiction in a trilogy of cases beginning with *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945) wherein the Court stated:

> ". . . due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have *certain minimum contacts* with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice,'" (Emphasis added.)
>
> 326 U.S. at 316, 66 S.Ct. at 158.

In *McGee v. International Life Ins. Co.*, 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957), the Supreme Court of the United States applied this "minimum contacts" standard and concluded that California had jurisdiction over a foreign insurance company despite the fact that the company had no office or agent in California and had never solicited or done any insurance business in California apart from transactions through the mails involving a single insurance policy, the company's sole contact with California. The Court concluded that the state's manifest interest in providing effective means of redress for its residents outweighed any possible inconvenience to the insurer.

The limitations on the "minimum contacts" standard were expressed in *Hanson v. Denckla*, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958), where the Court decided that a Florida Court did not have jurisdiction over a nonresident trustee in a controversy involving the corpus of a trust. The Court distinguished *McGee, supra*, on three grounds. In *McGee*, (1) the cause of action *arose out of an act done or transaction consummated* in the forum state, (2) the forum state had enacted *special legislation* to exercise its "manifest interest" in providing effective redress for its citizens, (3) the required minimum contact did not rest solely on the *unilateral activity* of those bringing the action in the forum state.

Under the standards enunciated in *International Shoe, McGee*, and *Hanson*, the Commonwealth Court properly exercised jurisdiction over the appellants. Although appellants only contact with this State was the solicitation of contributions by mail, this is sufficient when contrasted with the limitations of *Hanson*. We have here an act done or transaction consummated in Pennsylvania by the appellants when they solicited contributions in Pennsylvania by mail. We also have before us a cause of action which arose out of that solicitation. We are not now asked to decide, nor do we decide, whether the solicitation of funds would be a sufficient contact to confer jurisdiction for a cause of action not arising

out of the appellants' solicitation of funds in Pennsylvania. As in *McGee*, the cause of actin here arose out of an act done or transaction consummated by appellants in the forum state.

In this case, also as in *McGee*, the Commonwealth has enacted *special legislation* to exercise a "manifest interest" in providing effective redress for its citizens. Pennsylvania is not attempting to limit or prohibit the solicitation of funds by all charitable organizations. It only seeks to protect the citizens of the Commonwealth from unscrupulous organizations whose philanthropy may be directed excessively to other than the intended beneficiaries. This vigilance is in an area where effective redress by individuals acting alone would be extremely burdensome if not practically impossible.

Finally, in this case, as distinguished from *Hanson, supra*, the cause of action is not based on the *unilateral* activity of the appellee. Rather, the appellants actively and purposefully sought to solicit contributions from residents of this Commonwealth. It is this activity that is the basis of jurisdiction.

We must conclude, therefore, that appellants have done acts or consummated transactions in this State sufficient for Pennsylvania to exercise jurisdiction consistent with the Due Process Requirement of the Fourteenth Amendment.

[2] The appellants' second Due Process argument questions the validity of service of process upon the Secretary of the Commonwealth. They contend, in effect, that the Secretary is the real party-plaintiff in this action and thus it is a denial of due process to effectuate service upon the appellants through the Secretary as their registered agent. This argument lacks merit for two reasons. First of all, the Attorney General, not the Secretary, is the only party authorized to initiate an action under the Act. (10 P.S. § 160-14). Second, even assuming the Secretary of the Commonwealth is the real party plaintiff, it does not necessarily follow that there is not a reasonable assurance that notice to the defendant will be actual. *International Shoe, supra*. The Act specifically provides that service is sufficient only if:

> ". . . notice of such service and a copy of such process are forthwith sent by the Attorney General to the charitable organization . . . by registered or certified mail with return receipt requested at its or his office. . . ." (10 P.S. § 160-13).

Under these circumstances we cannot conclude that the mailing of the notice of suit to appellants by registered or certified mail at its home office was not reasonably calculated to apprise appellants of the suit. Compare *Hess v. Pawloski*, 274 U.S. 352, 47 S.Ct. 632, 71 L.Ed. 1091 (1927) with *Wuchter v. Pizzutti*, 276 U.S. 13, 48 S.Ct. 259, 72 L.Ed. 446 (1928).

[3] The appellants also contend that even if the substitute service provisions of the Act are sufficient for Due Process purposes, those provisions were not complied with in this case. They argue that since a copy of the complaint was not personally served *upon the Secretary* as required by Section 13 of the Act, 10 P.S. § 160-13, but rather *delivered to his office*, the service is defective and must be set aside. This issue as to the technical defect in service was not raised in the defendants' preliminary objections nor otherwise presented to the trial court. A matter not raised in the trial court will not be considered on appeal. *Wenzel v. Morris Distributing Co.*, 439 Pa. 364, 266 A.2d 662 (1970).

Finally, the NFB and the ABB contend that their preliminary objections to the court's jurisdiction should have been sustained because imposing Pennsylvania's regulatory scheme upon them is forbidden by the Commerce Clause of the United States Constitution (U.S.Const. art. I, § 8).

The Supreme Court of the United States has defined and delineated the limits of the Commerce Clause in a multitude of cases over the past two hundred years. In *Aldens, Inc. v. Packel*, 524 F.2d 38 at 45 (3d Cir. 1975) the Third Circuit Court of Appeals presented an accurate and concise analysis of the factors considered by the United States Supreme Court in determining whether a state statute violates the Commerce Clause:

> ". . . the commerce clause limits the power of a state to impose its choice of law on any transaction that is within the broad ambit of congressional power to regulate interstate commerce, and
>
> (1) is one in which Congress has made its own choice of law, or
>
> (2) is one in which Congress has made no specific choice of law, but
>
> (a) despite this inaction the nature of the subject matter requires a uniform national rule, or

(b) the choice of law made by the state discriminates against persons engaged in interstate commerce in favor of local interests, or

(c) a non-discriminatory state choice of law, in an area where national uniformity may not be essential, imposes a burden on interstate commerce in excess of any value attaching to the state's interest in imposing its regulation."

As to the first part of the test, the Congress of the United States has not sought to regulate the field of charitable organization and solicitation. Thus, any regulation imposed by Pennsylvania does not conflict with any preexisting regulation imposed by Congress.

In applying part 2(a) it must be concluded that although charities perform a laudatory function, that function cannot be perceived as an integral link in the national economic chain requiring a uniform national rule. (Compare *Allenberg Cotton Co., Inc. v. Pittman*, 419 U.S. 20, 95 S.Ct. 260, 42 L.Ed.2d 195 (1974) involving a species of control over an intricate interstate marketing mechanism for cotton.) In this context the case is similar to *Robertson v. California*, 328 U.S. 440, 66 S.Ct. 1160, 90 L.Ed. 1366 (1946) wherein the Supreme Court of the United States upheld California's insurance company reserve requirements, *prior* to the passage of the McCarran Act, (59 Stat. 33, 15 U.S.C. §§ 1011-1015) an Act specifically leaving the area of insurance regulation to the States.

Part 2(b) presents no obstacle to this Commonwealth's attempt to regulate the solicitation of charitable contributions. Since the Act applies to both local and foreign charitable organizations, it cannot be said that the Act discriminates against those engaged in interstate commerce in favor of local interests.

Finally, in applying part 2(c), we conclude that although the registration provisions of the Act may burden interstate commerce to some degree, that burden is outweighed by this State's interest in protecting its citizens from the fraud and deceit of unscrupulous "charitable" organizations. The requirements of the Act are no more burdensome than those held constitutional in *Robertson v. California*, 328 U.S. 440, 66 S.Ct. 1160, 90 L.Ed. 1366 (1946).

[4] We conclude, therefore, that the registration requirements of the "Solicitation of Charitable Funds Act" do not impose an undue burden on interstate commerce and accordingly we affirm the decree of the Commonwealth Court which overruled the appellants' preliminary objections.

THE APPEAL OF THE COMMONWEALTH OF PENNSYLVANIA

In this appeal, the Commonwealth of Pennsylvania appeals from the decree of the Commonwealth Court which denied its request for a preliminary injunction. Appellant first contends that under the express provisions of § 14(f) of the Act, 10 P.S. § 160-14(f) (Supp.1976) once *past violations* of the Act are established (failure to file a registration statement) an injunction *must* be issued. In effect, the appellant argues that the Act eliminates a court's discretion as to whether an injunction should be issued. Section 14(f) of the Act provides in part:

> "[W]henever a charitable organization . . . has failed to file a registration statement required by this act . . . in addition to all other actions authorized by law, the Attorney General . . . may bring an action in the name of the Commonwealth of Pennsylvania against such charitable organization and its officers . . . to enjoin such charitable organization . . . from continuing such violation, solicitation or collection or engaging therein or doing any act in furtherance thereof and for such other relief as the court deems appropriate."

[5] It should be noted initially that this Court has repeatedly held that the issuance of an injunction rests within the sound discretion of the trial court. *Vitacolonna v. City of Philadelphia,* 382 Pa. 399, 115 A.2d 178 (1955), *Rick v. Cramp*, 357 Pa. 83, 53 A.2d 84 (1947), *Borough of Cheswick v. Bechman*, 352 Pa. 79, 42 A.2d 60 (1945). In discussing congressional limitations on the court's discretion in an injunction, the Supreme Court of the United States in *Hecht Co. v. Bowles*, 321 U.S. 321, 329, 330, 64 S.Ct. 587, 591, 88 L.Ed. 754 (1944) stated:

> "We are dealing here with the requirements of equity practice with a background of several hundred years of history . . . we do not believe that such a major departure from that long tradition as is here proposed should be lightly implied."

[6] We agree with the above quoted opinion. The language of Section 14(f) of the Act merely authorizes the Attorney General to bring an action in the name of the Commonwealth upon failure of a charitable organization to comply with the registration requirements of the Act. It does not expressly provide that an injunction *must* be issued upon proof of a violation. Absent such express language we cannot conclude that the Legislature intended to eliminate the trial court's discretion in determining when an injunction should be issued.

[7] The appellants also contend that even if the statute does not expressly provide for the mandatory issuance of an injunction upon proof of a past violation, the court must issue an injunction when continuing violations are threatened. *See Pennsylvania Public Utility Commission v. Israel*, 356 Pa. 400, 52 A.2d 317 (1947). The record here, however, does not clearly establish that violations are continuing. Although the appellees have challenged the appellants' right to force them to register under the Act, we do not perceive this assertion of their constitutional rights as an indication of their *intent* to continue violation of the Act in the future.

The limits of our review of the denial of a preliminary injunction were stated in *Lindenfelser v. Lindenfelser*, 385 Pa. 342, 343-44, 123 A.2d 626, 627 (1956):

> "Our uniform rule is that, on an appeal from a decree which refuses, grants or continues a preliminary injunction, we will look only to see if there were *any apparently reasonable grounds* for the action of the court below, and we will not further consider the merits of the case or pass upon the reasons for or against such action, unless it is plain that no such grounds existed or that the rules of law relied on are palpably wrong or clearly inapplicable. . . ." (Emphasis added.)

We must conclude, therefore, that there were reasonable grounds for the action of the Commonwealth Court in denying the preliminary injunction.

We have considered other arguments raised by appellants and find them to be without merit.

The decrees of the Commonwealth Court ordering the defendants to file an answer to the Commonwealth's complaint within thirty days and denying the Commonwealth's motion for a preliminary injunction are affirmed.

Each party to pay own costs.

JONES, C. J., did not participate in the consideration or decision of this case.

Opposition

Office - Supreme Court, U.S.
FILED
FEB 19 1982
ALEXANDER L. STEVAS,
CLERK

NO. 81-1327

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NATIONAL HEALTH AGENCIES

PETITIONER,

VS.

UNITED WAY OF
SAN DIEGO COUNTY, INC., ET AL.,

RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Supremacy Clause of the United States Constitution, Article VI, Clause 2, mandates application of the rules and procedures promulgated by the United States Civil Service Commission, pursuant to executive order, to the activities of the Combined Federal Campaign, a highly structured fund-raising appeal conducted nationwide at federal facilities and installations.

2. Whether the Civil Service Commission exceeded its authority in promulgating the rules and procedures applicable to the 1977-1978 Combined Federal Compaign.

PARTIES TO THE PROCEEDING

Respondent, United Way of San Diego County, Inc., at the time this

controversy arose was a nonprofit corporation under the laws of the State of California with its principal place of business for San Diego County in the City of San Diego, State of California, whose members included seventy-seven (77) nonprofit organizations.

Respondent International Service Agencies at the time this controversy arose was an unincorporated association under the laws of the State of California with its principal place of business for San Diego County in the City of San Diego, State of California, whose members included six (6) nonprofit organizations.

Petitioner, National Health Agencies, at the time this controversy arose was an unincorporated association

under the laws of the State of California, with its principal place of business for San Diego County in the City of San Diego, State of California, whose members included fifteen (15) non-profit organizations.

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STATEMENT OF THE CASE

Petitioner, National Health Agencies ("NHA") brought the instant action for breach of contract, declaratory relief, imposition of a constructive trust and an injunction against United Way of San Diego County ("United Way") and International Service Agencies ("ISA") as a result of its dissatisfaction with a certain procedure that had been developed by the United States Civil Service Commission ("Commission") (now known as The Office of Personnel Management). [C.R. 1.]

The challenged procedure was established for use in the Combined Federal Campaign ("Campaign") conducted in the Fall of 1977. The Campaign is a highly structured fund-raising appeal conducted

nationwide at federal facilities and installations. [C.R. 21; Leary Affidavit, Exhibit A.] In the Fall of each year approved charitable groups solicit contributions from federal employees and members of the armed forces at their places of employment or duty stations. To assist in and direct the fund raising effort, the Commission establishes rules and procedures which govern the Campaign nationwide. The Commission's authority to promulgate rules and procedures governing the Campaign arises from Executive Order No. 10927, 26 Fed. Reg. 2383, issued by President Kennedy on March 18, 1961 which provides in part:

> " . . . Section 2(a). The chairman of the Civil Service Commission shall make arrangements for such national voluntary health and welfare agencies and such other

> national voluntary agencies as may be appropriate to solicit funds from federal employees and members of the armed forces at their place of employment or duty stations."

Pursuant to this Executive Order, the Commission prepares and issues a Manual on Fund Raising Within the Federal Service ("Manual") which details the procedures to be followed nationwide in local campaigns. [C.R. 21; Exhibit A.] The 1977 Manual, Section 4.8, included the following requirement related to validation of specific agency designations on a contributor's pledge card:

> "The pledge form will provide a line for the employee to confirm his choice of designation by entering his initials, and the keyman [the Campaign solicitor] will be instructed to insure that

designations have been so validated before turning in the completed cards." [C.R. 21; Exhibit A]

The requirement that a specific donee designation be validated by initialling was established by the Commission following consulation with United Way, NHA and ISA and was instituted to prevent fraud and to insure, as much as was possible, that the true intent of federal employee donors could be determined and fulfilled. [C.R. 21; Leary Affidavit: C.R. 25; Patti Affidavit] This requirement was in effect for the 1977 Campaign only; a different validation procedure was instituted thereafter.

The necessity for and reasonableness of the 1977 requirement becomes clear

when the mechanics involved in making a donation are viewed as a whole. In this regard, when an employee wishes to participate in the Campaign, he completes a contributor's card and if he wishes to authorize payroll deductions, he additionally completes a payroll deduction authorization form. To make a donation to the Campaign, an employee simply fills out the front portion of the Contributor's Card and signs at the bottom. His donation is then used to benefit some or all of the various agencies which are represented by United Way, ISA and NHA. If an employee wants his donation to be allocated to a specific agency represented by one of the three charitable groups, he can designate such agency by listing the

numerical symbol of the agency (obtained by consulting the Contributor's Guide) on the back of the card and verifying his designation with his initials. Whether an employee designates or not, he is given the same receipt for his donation which states that he has contributed to United Way, NHA and ISA. Upon completion of the front of the card and, if desired, the designation portion appearing on the back of the card, the cards are reviewed and signed on the back by keymen (campaign workers). By signing the card, the keyman verifies that the card has been properly completed and that any designations have been validated by the donor's initials. [C.R. 21; Leary Affidavit, Exhibits A, B, D, E, F.]

Given the fact that the contributor cards are not mailed directly to agencies but are passed through the hands of campaign workers, tampering is clearly possible. The Commission's concern with this problem is evidenced by the requirement for initialling by the donor if specific designations are intended. [C.R. 25; Patti Affidavit.] This concern was further evidenced by memoranda from the Commission to the local Campaigns. In this regard, in a Commission memorandum dated May 27, 1977, concerning validation of designations on Campaign pledge cards, the Commission stated:

> "We want to call your attention to the new requirement for initialling to validate designations and the responsibility of the keyman to insure that this is done. It

should be emphasized in training sessions and in any written instructions to keymen that it is their responsibility to check each card before leaving the contributor and, if the designation portion of the card has not been initialled as required, to call to the attention of the contributor the necessity for doing so if he wishes his designation to be honored." [C.R. 21; Exhibit B.]

Additionally, in a memorandum dated June 24, 1977, concerning the same subject, the Commission stated:

"This is in further reference to my memorandum of May 27 concerning the requirement in the fund raising manual that contributors who wish to designate their contributions to specific agencies must validate the designation by initialling where indicated on the pledge form.

"The purpose of this requirement is to assure that any designation shown on the pledge card was written in by the contributor himself and reflects the wishes of the employee who made the contribution. Employees and keymen

should be informed of the reason for the initialling requirement. . . .

"We want to emphasize the necessity for educating keymen to be sure that all cards bearing designations are initialled by the contributor. . . . Also, the contributor's leaflet should include a statement that designations not initialled will be considered as unsubstantiated and, therefore, will not be honored. If, in spite of these efforts, pledge cards are received at the central receipt point not properly initialled, the designation will be considered to be invalid and the contributions will be treated as undesignated funds. Any attempt to return the cards to their point of origin in most cases would be so administratively burdensome as to make the cost prohibitive and, under the circumstances, we would not recommend such action." [C.R. 21; Exhibit B.]

Given the Commission's mandate for initialling of specific designations on the pledge cards and the procedure to be followed should unvalidated numerical

designations appear, NHA, United Way and ISA developed a Keyman's Guide and Contributor's Guide incorporating the required procedure and appropriately instructing keymen and contributors regarding such. [C.R. 21; Leary Affidavit, Exhibits D, E.] The Keyman's Guide instructed those soliciting donations as follows:

> "Be sure the contributor completes the front of the contributor's card, that he signs it, and that he personally validates any designations by initialling on the line immediately below the last agency number. . . . If the contributor's signature or his validating initials are missing from the designation section of the contributor's card . . . the contribution will be credited as UNDESIGNATED." [C.R. 21; Exhibit D.]

The Contributor's Guide, supplied to employees who participated in the Campaign, provided:

> "Be sure to sign your contributor's card and personally validate any designations by initialling on the line immediately below the last agency number. . . . IF YOUR SIGNATURE OR THE VALIDATING INITIALS ARE MISSING . . . YOUR CONTRIBUTION WILL BE CREDITED AS UNDESIGNATED FUNDS." [C.R. 21; Exhibit E.]

The actual pledge card to be completed by donor employees provided, in capital letters, on the back of the card:

> "IF DESIGNATING, DONOR MUST VALIDATE BY INITIALLING ON THE LINE IMMEDIATELY BELOW THE AGENCY NUMBER." [C.R. 21; Exhibit F.]

Additionally, NHA's County Committee Operations Manual and Campaign Guide explained (emphasis in original):

"The pledge form will provide a line for the employee to confirm his choice of designation by entering his initials, and the keyman will be instructed to ensure that designations have been so validated before turning in the completed cards." [C.R. 21; Leary Affidavit]

In November of 1977, as required by the rules established by the Commission, representatives of NHA, ISA and United Way entered into a written participation agreement for the 1978 San Diego County Combined Federal Campaign.* The first paragraph of the agreement states that the campaign shall be conducted in accordance with the requirements of the

---

* As previously noted, the solicitation period for the 1978 Campaign took place in the Fall of 1977 and was governed by the 1977 Manual and Commission memoranda cited.

Commission's Manual. Further, in accord with the Commission's designation validation requirement, the Agreement included the following provision:

> "C. Disposition of Questionable Allocations.
>
> "If, on the contributor's card, the signature of the donor or his validating initials are missing, the contribution will be credited as undesignated funds. All cards which appear to be improperly completed will be reviewed by a committee or agency group representatives for final disposition." [C.R. 21; Leary Affidavit, Exhibit G.]

During the 1978 San Diego County Campaign solicitation period approximately 6,400 (out of approximately 113,000) pledge cards contained numerical designations on the back which were not properly validated. These pledges totaled about $150,000. If the pledges

had been honored, NHA would have received approximately $100,000, whereas under the allocation formula for undesignated funds that was previously agreed to by the parties, virtually all of the $150,000 went to the United Way and International Service Agencies. Pursuant to the procedures and requirements outlined in the Commission's Manual, the Contributor's Guide, the Keyman's Guide, the Commission's memoranda, the pledge card and the contract among the three charitable organizations involved in the campaign, these pledges were treated as undesignated contributions for allocation purposes. [C.R. 21; Leary Affidavit.]

Thereafter, despite NHA's voluntary participation in the Campaign, its prior

acceptance of and adherence to the Commission's national regulations and its entry into the agreement with United Way and ISA, all of which actions clearly evidenced its acceptance of the designation and allocation procedures as outlined above, NHA demanded that unvalidated designations be honored. [C.R. 1.] NHA thereupon launched an assault upon the Commission's national regulations and procedures outlined in the Manual and the agreement among the three charitable groups by filing the complaint in this action. [C.R. 1.] NHA pursued its challenge despite the fact that all the money contributed to the Campaign had long since been dispersed to the charities. [C.R. 21; Leary Affidavit.]

Thereafter, as the material facts necessary for a determination of the controversy appeared to be clear to all the parties, reciprocal Cross-Motions for Summary Judgment were filed by the three charitable groups involved. [C.R. 17, 20, 21.] Following a hearing before the Honorable Edward J. Schwartz, Summary Judgment in favor of United Way and ISA was Ordered and entered and NHA's motion was denied. [C.R. 27, 28.] In so ruling, Judge Schwartz found the requirements and regulations and the "whole arrangement" established by the Commission for the conduct of the Campaign to be "a proper one to deal with the purposes intended." (R.T. p. 21.) Additionally, in addressing NHA's contention that the

Commission's validation requirement is contrary to California Gift and Trust Law, the court noted:

> "In any event, it appears to me that there would be no way of clearly ascertaining a donor's intention, and I think the method that was set up here was one that is a reasonable one, a good one, to carry out the program in a reasonably reliable manner. . . ." [R.T. p. 24.]

NHA appealed Judge Schwartz's ruling to the United States Court of Appeals for the Ninth Circuit. In its Memorandum Opinion [Appendix A to Petitioner's Petition for a Writ of Certiorari], the Ninth Circuit affirmed Judge Schwartz's ruling and, in so doing, stated "that the Commission's validation requirement was a reasonable means of preventing fraud and other abuses" and that "[i]t

was well within the Commission's delegated authority" to establish the validation requirement. The court concluded its Opinion by stating:

> "The district judge did not state whether California law would require the pledge cards to be honored without the donor's initials, nor do we. It is apparent, however, that even if California law could be construed as NHA urges, it would not be controlling in this case. Under the supremacy clause, the Civil Service Commission could not be forced to comply with local laws in regulating the conduct of charitable campaigns at federal institutions. Hancock v. Train, 426 U.S. 167, 178-81 (1976); Mayo v. United States, 319 U.S. 441, 445 (1943); Maun v. United States, 347 F.2d 970, 974-76 (9th Cir. 1965). To hold otherwise could force the Commission to comply with a myriad of rules, rendering an orderly campaign all but impossible. See United States Postal Service v. Council of Greenburgh Civic Associations, ____ U.S. ____, 49 U.S.L.W. 4813, 4818-19 (June 25, 1981). Since in this case the Commission's requirements

were within its authority, the judgment of the district court is affirmed."

NHA filed a timely petition for rehearing, however, the petition was denied by the Ninth Circuit on October 19, 1981.

REASONS FOR DENYING THE WRIT

The writ should be denied because the Petitioner has failed to enunciate any reason for this Court to exercise its supervisory power.

The Petitioner has failed to show that the Ninth Circuit's decision is in conflict with a decision of another court of appeals, or with a decision of the California Supreme Court, on the same matter.

The Petitioner has failed to show that the Ninth Circuit failed to fully consider and correctly decide the issues in this case. The Petitioner merely criticizes the Ninth Circuit's decision and asserts that the four cases cited by the court in its final paragraph are factually distinguishable from this case. The cases were cited by the court to establish that the Commission had, and indeed had to have, plenary authority over the conduct of charitable campaigns at federal institutions to ensure their orderly execution. Further, the court held that the validation requirement was a valid exercise of the Commission's authority, derived from Executive Order 10927, to establish procedures for the Campaign, and that

the requirement was a reasonable means of preventing fraud and other abuses. By attempting to distinguish the facts of this case from the facts underlying the four cases cited by the court in its final paragraph, the Petitioner has done nothing more than display its dissatisfaction with the reasoning supporting the appellate court decision and has failed to assert any viable ground for action by this Court.

Petitioner argues that state law should control disposition of the issues in this case even if it conflicts with the rules and procedures promulgated by the Commission. However, even if California law did apply, it would have no effect upon the validity of the validation requirement in issue. In this

regard, Petitioner urges that, under California law, the intent of the donor must be honored. Such a contention misses the point. The problem in this case does not involve misapplication of funds when given a clear indication of the intent of the donor. Rather, the lack of validation of designation by the donor clearly puts his true intent in issue as it is unknown whether the contributor or someone else filled in the numbers appearing on an otherwise blank side of a pledge card containing, in most cases, only the signature of another, the keyman. If anything, the distribution of donated funds to the charitable groups involved in the Campaign pursuant to the procedure established by the Commission and agreed upon

by the Petitioner and the Respondents did fulfill the intent of the donor to the extent possible. Given the clear instructions provided to the contributor in the Contributor's Guide and on the pledge card itself and those provided to the keyman, it would be sheer speculation to attribute the unvalidated numerical designations to the donor rather than to others involved in the processing of the cards.

Clearly, the Commission's rules for the Campaign, not state law, must govern this action. Pursuant to the Supremacy Clause of the United States Constitution, Article VI, Clause 2, once valid federal rules, regulations and procedures are established by congressional command or executive order, state law

cannot be given effect if it conflicts with the federal requirements or otherwise burdens the exercise of federal power. Hancock v. Train, 426 U.S. 167, 178-81 (1976); Farmer v. Philadelphia Electric Co., 329 F.2d 3, 7 (3rd Cir. 1964); City of Los Angeles v. United States, 355 F. Supp. 461, 464 (C.D. Cal. 1972). In this regard, for Supremacy Clause purposes,

> "'All constitutional acts of power whether in the executive or in the judicial department, have as much legal validity and obligation as if they proceeded from the legislature . . . ' The Federalist, No. 64." United States v. Pink, 315 U.S. 203, 230 (1942).

Consequently, once Congress or the executive branch has validly exercised power to formulate policy or establish federal programs, they are free to

proscribe those things made legal or commanded by state authority. South Terminal Corp. v. Environmental Protection Agency, 504 F.2d 646, 677 (1st Cir. 1974). Any state law requiring disregard of the validation requirement and distribution plan for undesignated funds would be in direct conflict with the Commission's rules and procedures for the Campaign. Therefore, under the Supremacy Clause, federal law, as established by the Commission's rules and procedures, must govern the merits of this action.

Petitioner also argues that the Commissioner's rules and procedures were arbitrary. However, only if the Commission's validation requirement was completely devoid of any rational basis

should it now be held invalid. See American Bible Society v. Blount, 446 F.2d 588, 597 (3rd Cir. 1971); New England Petroleum Corp. v. Federal Energy Administration, 455 F. Supp. 1280, 1301 (S.D.N.Y. 1978). The Commission's requirement of donor validation by initialling following the numerical designation of agencies is clearly rational and reasonable and was promulgated to ensure "true voluntary giving" through the prevention of fraud. Accordingly, as the court of appeals correctly applied the law to the facts presented, there is no reason for this Court to exercise its supervisory powers.

Lastly, because the validation requirement in issue was in effect only for the Fall of 1977 Campaign, review by

this Court will have virtually no prospective significance.

CONCLUSION

The issues involved in this case do not warrant review by this Court because there has been no showing that the Ninth Circuit's decision conflicts with a decision of any other court or that the Ninth Circuit failed to fully consider and correctly decide the issues. Indeed, the Ninth Circuit's decision represents a full, fair and correct resolution of the issues. The Commission's requirement that specific designations for the use of contributed funds be validated by the donor is a rational and reasonable exercise of its authority

under Executive Order No. 10927. Further, the Supremacy Clause requires that the Commission's rules be honored and enforced and precludes an attack premised upon state law. In any event, the Commission's validation requirement is designed to prevent fraud and ensure clear determination of a donor's intent and is consistent with California law. Accordingly, the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit should be denied.

Respectfully Submitted,

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